

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.7352 OF 1996

with

CIVIL APPLICATION NO.944 OF 1999

in

SPECIAL CIVIL APPLICATION NO.7352 OF 1996

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- 
1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

-----

PJ KAPADIA  
VERSUS  
STATE OF GUJARAT

-----

Appearance:

MR PARESH UPADHYAY for Petitioner  
MR HH PATEL for Respondents

-----

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision:15/10/1999

C.A.V. JUDGMENT

#. The petitioner, Fisheries Officer of the Fisheries Department, is making a complaint in this writ petition against the combined seniority list of Fisheries Officers and Fisheries Assistants. This combined final seniority list was published on 7.8.96. The petitioner filed representation against this final seniority list which came to be rejected. It is the grievance of the petitioner that though he was appointed on the post of Fisheries Assistant in the year 1983, he was selected for the post of Fisheries Officer in the open selection and appointed on that post on 2.11.89. The pay scale for the post of Fisheries Officer was higher than the pay scale for the post of Fisheries Assistant. The channel of promotion was also provided to the post of Fisheries Officers from the post of Fisheries Assistant. In the Gujarat Civil Services (Revision of Pay) Rules, 1987, though pay for these two posts were made same but the post Fisheries Assistant was redesignated as Fisheries Officer only on 29th July 1995 and this has been given effect to from 1.1.86. The petitioner was selected on the higher post and pay scale. Merely by this change of nomenclature as well as making of the pay scale to be same for these two posts, he should not have been deprived of higher seniority.

#. However, this is not the point on which this Court has to decide this matter. The matter regarding anomaly in the pay scales of these two posts is raised in the Special Civil Application No.7648 of 1993. That has been dismissed on the ground to first approach to the Pay Anomaly Committee constituted by the Finance Department, Government of Gujarat, vide Resolution No.PGR-1098-34-M dated 20th May 1998. In substance, the grievance of the petitioner is against this pay anomaly and he can also approach to the Committee aforesaid. If ultimately the Committee decides that these two posts are to be taken to be separate and distinct, then certainly the petitioner's grievance made in this Special Civil Application is to be accepted. In case if ultimately the Committee decides that whatever contained under Rules, 1987, for these two posts is correct, then there may be occasion for the Court to decide on this grievance of the petitioner. At this stage, this writ petition cannot be entertained.

#. The learned counsel for the petitioner then submits that the petitioner has also, by filing Civil Application No.944 of 1999, made a grievance that he has been illegally denied benefit of higher pay scale on completion of nine years' service. That benefit was stated to be denied only on the ground that this Special Civil Application is pending.

#. I fail to see any justification in this approach of the respondent, if what the petitioner states is correct. The claim of the petitioner for the higher pay scale under the Resolution of the Government on completion of nine years' service has nothing to do with this Special Civil Application. If ultimately the petitioner succeeds in this Special Civil Application, the pay scale of the post of Fisheries Officer has to be taken to be higher than the post of Fisheries Assistant and the petitioner should have been given the higher pay, then they have to make some modification in the order of granting him higher pay scale but only on this ground, he could not have been denied the same. For this, it is open to the petitioner to file a fresh representation and it is hoped that the same shall be considered by the concerned Secretary of the State of Gujarat, in the light of the observations made in this judgment. The Civil Application is dismissed subject to aforesaid observations.

#. In the result, the Special Civil Application fails and the same is dismissed with liberty to the petitioner to approach to the Pay Anomaly Committee as aforesaid. In case ultimately the Committee decides the matter against the petitioner, he is at liberty to file a note for revival of this Special Civil Application. Rule discharged. No order as to costs.

.....

[sunil]